

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
	)	
	)	
<b>v.</b>	)	<b>Crim. No. 92-50-B</b>
	)	
<b>KENNETH R. DEXTER,</b>	)	
	)	
<b>Defendant</b>	)	

***RECOMMENDED DECISION TO DENY DEFENDANT'S MOTION  
FOR COLLATERAL RELIEF PURSUANT TO 28 U.S.C. § 2255***

Kenneth R. Dexter moves this Court to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 (1994). The Court having already disposed of most of Dexter's claims in a prior decision, the sole issue of concern in the present matter is whether Dexter received ineffective assistance of counsel because his attorney failed to argue at sentencing that Dexter's civil rights were restored by Massachusetts for purposes of 18 U.S.C. § 922(g) (Supp. 1997) following a prior conviction there. Concluding that a recent decision by the First Circuit Court of Appeals is dispositive of the issue, the Court recommends that the motion be denied.

An ineffective assistance of counsel claim is reviewed under the now familiar two-prong analysis set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). Specifically, Dexter must show the Court that counsel's performance was deficient. *Id.* at 687. He also must demonstrate that, but for counsel's deficient performance, the outcome of the trial would have been different. *Id.* As there is no requirement that the Court analyze these prongs in any particular order, a failure to show prejudice itself will suffice to defeat a particular claim, without reference to the level of counsel's performance. *Id.* "A fair assessment of attorney performance requires that every effort be made to

eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.*

Dexter contends that his 1982 conviction in Massachusetts for burglary should not have been considered by the court at sentencing for purposes of 18 U.S.C. § 922(g)(1) because, pursuant to *United States v. Caron*, 77 F.3d 1, 2-5 (1st Cir. 1996), it was a conviction for which his civil rights had been restored by operation of law within the meaning of 18 U.S.C. § 921(a)(20) (Supp. 1997). At sentencing Dexter pleaded guilty to charges of possessing a handgun in Maine, thus violating the Massachusetts prohibition on possession of a firearm outside of a home or a business. Mass. Gen. Laws ch. 140, §§ 125, 131, 131F. During the time period between this Court's initial recommendation that the parties brief this issue further and its current decision, the First Circuit announced its decision in *United States v. Estrella*, No. 96-1625 (1st Cir. Jan. 9, 1997), a case similar to the one at bar. In *Estrella*, the court held that a defendant's prior conviction in Massachusetts for armed robbery and assault qualified him for prosecution pursuant to the felon-in-possession statute, 18 U.S.C. § 921(a)(20). *Id.*, slip op. at 13. Specifically, the court stated that "Massachusetts' ban on handgun possession by ex-felons outside the home or business is a substantial enough limit on firearms rights to preserve the federal ban." *Id.* Thus, a Massachusetts conviction continues to qualify as a predicate both to the federal felon-in-possession statute, 18 U.S.C. § 922(g)(1), and to the sentencing provisions applied to an armed career criminal, *id.* § 924(e)(1) (Supp. 1997). Accordingly, Dexter's contention is unpersuasive; his prior conviction properly was considered at sentencing as part of the felon-in-possession statute.

In light of the above, it is clear that Dexter's attorney's failure to argue against consideration of Dexter's prior conviction in Massachusetts at sentencing was not deficient and did not constitute ineffective assistance of counsel. Accordingly, the Court recommends that the motion be **DENIED**.

#### NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

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Eugene W. Beaulieu  
United States Magistrate Judge

Dated in Bangor, Maine on March 12, 1997.